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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,265	07/01/2003	Teresa Mead	017242-010800US	4098
20350	7590	06/29/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

②

## Office Action Summary

Application No.

10/612,265

Applicant(s)

MEAD, TERESA

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 29 and 30 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-22 and 24-28 is/are allowed.
- 6) ☒ Claim(s) 1-14 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20031020</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-28 in the reply filed on 11 April 2005 is acknowledged. Claims 29 and 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### ***Specification***

2. The disclosure is objected to because of the following informalities: (1) on line 1 of the abstract, "brad" appears to be misspelled and (2) on page 3 of the specification, the blank spaces in lines 1 and 2 should be filled in.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. Claims 9 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 9 and 23, "the connecting sides" lacks antecedent basis in the claims.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Art Unit: 3727

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Marks or Nathan. Each of Marks and Nathan discloses a bag including a bag body having a curved top end, curved connecting sides below the top end, and a carrying strap and handle (27, 27 in Marks, corresponding structure in Nathan) as claimed. It is noted that no distinction is seen between the claimed bag and that shown in either Marks or Nathan as a result of the claimed intended use to hold a curved pillow with arms, i.e. each of the bags in Marks and Nathan are considered capable of retaining a curved pillow of like size to the bag.

6. Claims 1, 4-6 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Leachman or Distefano et al. Each of Leachman and Distefano et al discloses a bag including a bag body having a curved top end, a carrying strap and handle (38, 40; 50, 60, respectively) and a storage device (48; 40, respectively) as claimed. It is noted that no distinction is seen between the claimed bag and that shown in either Leachman or Distefano et al as a result of the claimed intended use to hold a curved pillow with arms, i.e. each of the bags in Leachman and Distefano are considered capable of retaining a curved pillow of like size to the bag.

7. Claims 1, 4, 5 and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoo. Yoo discloses discloses a bag including a bag body having a curved top end, a carrying strap and handle, a front pocket with sub-pockets formed by the panel 2 and a storage device 24 as claimed. It is noted that no distinction is seen between the claimed bag and that shown in Yoo as a result of the claimed intended use to hold a curved pillow with arms, i.e. the bag in Yoo is considered capable of retaining a curved pillow of like size to the top of the bag.

Art Unit: 3727

8. Claims 1-8 and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Stobbs, II et al. Stobbs, II et al discloses a bag including a bag body having a curved top end, curved connecting sides below the top end, a carrying strap and handle (34, 36, 37), a front or rear pocket with sub-pockets formed by the panel 32 insofar as claimed. It is noted that no distinction is seen between the claimed bag and that shown in Stobbs, II et al as a result of the claimed intended use to hold a curved pillow with arms, i.e. the bag in Stobbs, II is considered capable of retaining a curved pillow of like size to the bag.

9. Claims 1-7, 9 and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Godshaw et al. Godshaw et al discloses a bag including a bag body having a curved top end, curved connecting sides below the top end, a carrying strap and handle (100, 104) and pockets on the side and either the front or rear (see fig. 2) as claimed. It is noted that no distinction is seen between the claimed bag and that shown in Godshaw et al as a result of the claimed intended use to hold a curved pillow with arms, i.e. the bag of Godshaw et al is considered capable of retaining a curved pillow of like size to the bag.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Marks, Nathan, Stobbs, II et al or Godshaw et al. Each of Marks, Nathan, Stobbs, II et al and Godshaw et al discloses all structure of the claimed bag except formation of the bag body with a

Art Unit: 3727

height between about 15 inches to about 31 inches (cl. 12), formation of the curved top end with a radius of curvature between about 7 inches to about 13 inches (cl. 13) or a bottom end with a length between about 15 inches to about 25 inches (cl. 14). With respect to claim 12, it would have been obvious to make the bag in any one of Marks, Nathan, Stobbs, II et al or Godshaw et al with a height between about 15 to about 31 inches as a matter of sizing of the container to hold contents which have a height between about 15 inches to about 31 inches. Sizing of a container to hold a known content having a particular height would have been prima facie obvious to one of ordinary skill in this art. With respect to claim 13, it would have been obvious to make radius of the curved portion at top of the bag in any one of Marks, Nathan, Stobbs, II et al or Godshaw et al between about 7 inches to about 13 inches as a matter of sizing of the curved portion to hold a given content. Sizing of a container to hold a known content having a particular radius of curvature would have been prima facie obvious to one of ordinary skill in this art. With respect to claim 14, it would have been obvious to make the bottom of the bag in any one of Marks, Nathan, Stobbs, II et al or Godshaw et al with a length between about 15 inches to about 25 inches as a sizing of the container to hold contents which have a length between about 15 inches to about 25 inches. Sizing of a container to hold a known content having a particular length would have been prima facie obvious to one of ordinary skill in this art. It is noted that each of measurements being alternatively claimed does not limit the bag to holding a particular size of pillow, but rather merely defines a container which could be holding any particular content having a similar height or length or radius of curvature, i.e. the broad range of alternative measurements being claimed encompass a wide variety of articles capable of being transported in the bag.

*Allowable Subject Matter*

12. Claims 15-22 and 24-28 are allowed.
13. Claim 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

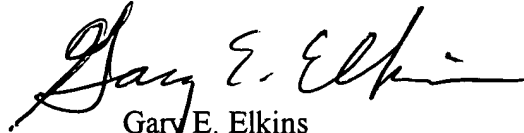
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

Art Unit: 3727

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

A handwritten signature in black ink, appearing to read "Gary E. Elkins". The signature is fluid and cursive, with the first name "Gary" being the most prominent.

Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
26 June 2005